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Pages:	Cover + 1 + 1 + 1 + 18 = 22	Date: November 27, 2006
From:	Georgann S. Grunebach	Fax: (310) 964-0941
	Assistant General Counsel	Phone: (310) 964-4615

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A handwritten signature in black ink, appearing to read "Georgann S. Grunebach".

November 27, 2006  
(Date of Signature)

Telephone No. (310) 964-4615 (Printed Name of Person Signing Certificate)

Attention: Commissioner for Patents

Attorney Docket No. PD-201169

Please find attached Re:

Serial No.: 10/010,486

Filing Date: December 7, 2001

- TRANSMITTAL FORM PTO/SB/21 (1 page)
- FEE TRANSMITTAL FORM PTO/SB/17 (1 page in duplicate)
- APPEAL BRIEF IN RESPONSE TO NOTICE OF APPEAL FILED OCTOBER 11, 2006 (18 pages)

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PTO/SB/21 (09-06)

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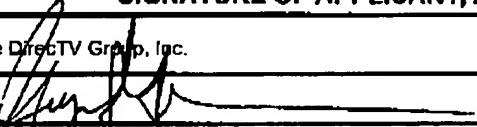
Total Number of Pages in This Submission

21

Application Number	10/010,488
Filing Date	December 7, 2001
First Named Inventor	William T. Frantz
Art Unit	2812
Examiner Name	LU, Shirley
Attorney Docket Number	PD-201169

ENCLOSURES (Check all that apply)		
<input checked="" type="checkbox"/> Fee Transmittal Form <input type="checkbox"/> Fee Attached <input type="checkbox"/> Amendment/Reply <input type="checkbox"/> After Final <input type="checkbox"/> Affidavits/declaration(s) <input type="checkbox"/> Extension of Time Request <input type="checkbox"/> Express Abandonment Request <input type="checkbox"/> Information Disclosure Statement <input type="checkbox"/> Certified Copy of Priority Document(s) <input type="checkbox"/> Reply to Missing Parts/ Incomplete Application <input type="checkbox"/> Reply to Missing Parts under 37 CFR 1.52 or 1.53	<input type="checkbox"/> Drawing(s) <input type="checkbox"/> Licensing-related Papers <input type="checkbox"/> Petition <input type="checkbox"/> Petition to Convert to a Provisional Application <input type="checkbox"/> Power of Attorney, Revocation <input type="checkbox"/> Change of Correspondence Address <input type="checkbox"/> Terminal Disclaimer <input type="checkbox"/> Request for Refund <input type="checkbox"/> CD, Number of CD(s) _____ <input type="checkbox"/> Landscape Table on CD	<input type="checkbox"/> After Allowance Communication to TC <input type="checkbox"/> Appeal Communication to Board of Appeals and Interferences <input checked="" type="checkbox"/> Appeal Communication to TC (Appeal Notice, Brief, Reply Brief) <input type="checkbox"/> Proprietary Information <input type="checkbox"/> Status Letter <input type="checkbox"/> Other Enclosure(s) (please identify below):
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**SIGNATURE OF APPLICANT, ATTORNEY, OR AGENT**

Firm Name	The DirecTV Group, Inc.		
Signature			
Printed name	Georgann S. Grunebach		
Date	November 27, 2006	Reg. No.	33,179

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Date November 27, 2006

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NOV 27 2006

PTO/SB/17 (07-06)

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Fees pursuant to the Consolidated Appropriations Act, 2005 (H.R. 4818).

**FEE TRANSMITTAL  
For FY 2006** Applicant claims small entity status. See 37 CFR 1.27

TOTAL AMOUNT OF PAYMENT (\$)

500

**Complete If Known**

Application Number	10/010,486
Filing Date	December 7, 2001
First Named Inventor	William T. Frantz
Examiner Name	LU, Shirley
Art Unit	2612
Attorney Docket No.	PD-201169

**METHOD OF PAYMENT (check all that apply)**

<input type="checkbox"/> Check	<input type="checkbox"/> Credit Card	<input type="checkbox"/> Money Order	<input type="checkbox"/> None	<input type="checkbox"/> Other (please identify): _____
<input checked="" type="checkbox"/> Deposit Account			Deposit Account Number:	50-0383
Deposit Account Name: The DIRECTV Group, Inc.				
For the above-identified deposit account, the Director is hereby authorized to: (check all that apply)				
<input checked="" type="checkbox"/> Charge fee(s) indicated below		<input type="checkbox"/> Charge fee(s) indicated below, except for the filing fee		
<input checked="" type="checkbox"/> Charge any additional fee(s) or underpayments of fee(s) under 37 CFR 1.16 and 1.17		<input checked="" type="checkbox"/> Credit any overpayments		

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**FEE CALCULATION****1. BASIC FILING, SEARCH, AND EXAMINATION FEES**

Application Type	FILING FEES		SEARCH FEES		EXAMINATION FEES		Fees Paid (\$)
	Fee (\$)	Small Entity	Fee (\$)	Small Entity	Fee (\$)	Small Entity	
Utility	300	150	500	250	200	100	_____
Design	200	100	100	50	130	65	_____
Plant	200	100	300	150	160	80	_____
Reissue	300	150	500	250	600	300	_____
Provisional	200	100	0	0	0	0	_____

**2. EXCESS CLAIM FEES**Fee Description

Each claim over 20 (including Reissues)

Small Entity

Fee (\$)

Fee (\$)

Each independent claim over 3 (including Reissues)

50

25

Multiple dependent claims

200

100

Total Claims Extra Claims Fee (\$) Fee Paid (\$)

360

180

Fee (\$)

Fee Paid (\$)

HP = highest number of total claims paid for, if greater than 20.

Indep. Claims Extra Claims Fee (\$) Fee Paid (\$)

Fee (\$)

Fee (\$)

HP = highest number of independent claims paid for, if greater than 3.

- 3 or HP = \_\_\_\_\_ x \_\_\_\_\_ = \_\_\_\_\_

**3. APPLICATION SIZE FEE**

If the specification and drawings exceed 100 sheets of paper (excluding electronically filed sequence or computer listings under 37 CFR 1.52(e)), the application size fee due is \$250 (\$125 for small entity) for each additional 50 sheets or fraction thereof. See 35 U.S.C. 41(a)(1)(G) and 37 CFR 1.16(s).

Total Sheets Extra Sheets Number of each additional 50 or fraction thereof Fee (\$) Fee Paid (\$)

- 100 = \_\_\_\_\_ / 50 = \_\_\_\_\_ (round up to a whole number) x \_\_\_\_\_ = \_\_\_\_\_

**4. OTHER FEE(S)**

Non-English Specification, \$130 fee (no small entity discount)

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Fee Paid (\$)

\$500

**SUBMITTED BY**

Signature	Registration No. (Attorney/Agent) 33,179	Telephone 310-964-4615
Name (Print/Type) Georgia S. Grunebach	Date November 27, 2006	

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Georgann S. Grunebach (Name of Registered Representative)

Reg. No. 53,119

(Signature) November 22, 2006 (Date of Signature)

Customer Number 020991

Patent  
PD-201169IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
BEFORE THE BOARD OF PATENT APPEALS AND INTERFERENCES

In Re Application of:

William T. Frantz

Serial No.	10/010,486	Group Art Unit: 2612
Filed:	12/07/2001	Examiner: Shirley Lu
For:	SYSTEM, METHOD AND APPARATUS TO DELIVER GUARANTEED ADVERTISING	

## APPEAL BRIEF

Mail Stop Appeal Brief-Patents  
Commissioner for Patents  
P. O. Box 1450  
Alexandria, VA 22313-1450

11/28/2006 MBIZUNES 00000007 500383 10010486  
01 FC:1402 500.00 DA

Sir:

The following Appeal Brief is submitted pursuant to the Notice of Appeal dated October 11, 2006.

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**I. Real Party in Interest**

The real party in interest in this matter is The DirecTV Group, Inc., of El Segundo, California which is 34 percent owned by Fox Entertainment Group, which is approximately 82 percent owned by The News Corporation, Limited.

**II. Related Appeals and Interferences**

There are no other known appeals or interferences which will directly affect or be directly affected by or have bearing on the Board's decision in the pending appeal.

**III. Status of the Claims**

Claims 1-19 stand rejected in the Final Office Action.

**IV. Status of Amendments**

A Response After Final was submitted. There have been no amendments filed subsequent to the Advisory Action.

**V. Summary of Claimed Subject Matter**

Claim 1 is directed to a communication system that is generally shown in Figure 1. The communication system is identified by reference numeral 1000 and is described on page 5, line 24 – page 6, line 2. The communication system 1000 delivers audio and/or video messages to a subscriber. The communication system 1000 includes a transmitter 100, 200 for transmitting broadcast programming and audio and/or video messages to a subscriber as separate data streams. This is described on page 13, line 22 – page 14, line 4. The system further includes at least one communication apparatus, illustrated in Figure 3 and described on page 8, line 9. The

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communication apparatus has receiver circuitry, described on page 6, line 14, for receiving the audio and/or video messages data stream separate from receiving the data stream containing the broadcast programming. Each subscriber has at least one communication apparatus. The communication apparatus includes a processor 310 operatively connected to a mass storage device 320 for processing and storing the received audio and/or video messages. This is described on page 16, lines 21-28. A sensor generates a using message indicative of a subscriber using the broadcast programming. This is described on page 16, lines 7-9. The processor accesses the stored audio and/or video for display in place of the broadcast programming being currently used by the subscribers in response to the using message. This is described on page 16, line 21-28.

Claim 2 depends from claim 1 and recites that that processor display stored audio and/or video messages based upon detecting a trigger. This is described on page 16, line 23.

Claim 3 depends upon claim 2 and recites that the trigger comprises instructions received together with the audio and/or video messages or from the instructions imbedded in the broadcast content or both (page 14, line 21 – page 15, line 2).

Claim 4 depends from claim 1 and recites that the transmitter comprises an uplink facility 100, illustrated in Figures 1 and 2, for digitally encoding and multiplexing the audio and/or video messages into a packetized data stream, and for encoding and modulating the packet data into a suitable frequency band for reception. This is described on page 7, lines 1-11. Claim 4 further recites a satellite 200, illustrated in Figures 1 and 2, for receiving the data packet via an airlink from the uplink facility 100 and for transmitting the data packet to the at least one communication apparatus. This is described on page 7, lines 12-21.

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Claim 5 depends from claim 1 and recites that the audio and/or video messages are advertisements or commercials provided by content providers and intended for targeted subscribers. This is described on page 13, lines 19-26.

Claim 6 depends on claim 1 and recites that the content providers are assured that an advertisement or commercial reaches the desired subscribers, as the content provider knows the targeted subscriber, when the advertisement or commercial will be provided on a device operatively connected to the subscriber's communication apparatus, and the amount or length of time the advertisement or commercials to be provided to the subscriber. This is described on page 13, lines 19-26.

Claim 7 depends upon claim 1 and recites that the communication apparatus is a receiver or set top box 300. This is illustrated in Figure 1 and described on page 14, line 15.

Claim 8 is an independent claim directed to a method for providing audio and/or video messages to subscribers in a communication system 1000, as illustrated in Figure 1 and described on page 5, line 24 – page 6, line 2. Claim 8 includes the steps of transmitting broadcast programming and/or video messages to the subscribers as separate data streams from one location. This is described on page 13, line 22 – page 14, line 4. Claim 8 further recites generating a viewing message indicative of a subscriber viewing the broadcast programming. This is described on page 16, lines 21-28.

Claim 8 also recites receiving the audio and/or video messages data stream separate from receiving the data stream containing the broadcast programming at the subscriber's location, a received audio and/or video messages further subject to processing for display in place of the broadcast programming being currently used by the subscribers in response to a viewing message. This is described on page 16, lines 21-28.

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Claim 9 depends upon claim 8 and recites that the audio and/or video messages are displayed based upon detecting a trigger. This is described on page 16, line 23.

Claim 10 depends from claim 9 and recites that the trigger comprises instructions received together with the audio and/or video messages or from instructions imbedded within the broadcast content, or both. This is described on page 14, line 21 – page 15, line 2.

Claim 11 depends from claim 8 and recites digitally encoding and multiplexing the audio and/or video messages into a packetized data stream. This is described on page 7, lines 1-11.

Claim 11 further recites encoding and modulating the digitally encoded data packet into a suitable frequency band for reception. This is also described on page 7, lines 1-11. Claim 11 also recites transmitting the data packet to the subscribers. This is described on page 7, lines 12-21.

Claim 12 depends from claim 8 and recites that the audio and/or video messages are advertisements or commercials provided by content providers and intended for targeted subscribers. This is described on page 13, lines 19-26.

Claim 13 depends from claim 12 and recites that the content providers are assured that an advertisement or commercial reaches the targeted subscribers, as the content provider knows the targeted subscriber, when the advertisement or commercial will be provided to the targeted subscriber, and the amount or length of time the advertisement or commercial is to be provided to the targeted subscriber. This is described on page 13, lines 19-26.

Claim 14 is an apparatus claim directed to a communication apparatus for processing audio and/or video messages received from a communication system for viewing by a subscriber. The communication system is illustrated in Figure 1 as reference numeral 1000 and described on page 5, line 24 – page 6, line 2. Claim 14 further recites receiver circuitry, such as set top box 300, for receiving an audio and/or video message data stream that is transmitted separately from

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a data stream containing broadcast programming that is received. The receiver is described on page 14, lines 12-16.

Claim 14 further recites a processor 310 operatively connected to a mass storage device 320 for processing and storing the received audio and/or video messages. This is described on page 14, lines 21-28. A sensor generates a using message indicative of a subscriber using the broadcast programming. This is described on page 16, lines 7-9. Claim 14 additionally recites a processor operatively connected to the receiver circuitry, the sensor and the mass storage device 320. The processor processes and stores the received audio and/or video messages. The processor accesses the stored audio and/or video messages for display in place of broadcasting or broadcast programming that is being currently used by the subscriber in response to the using message. This is described on page 16, lines 21-28.

Claim 15 depends from claim 14 and recites that the processor displays the stored audio and/or video messages based upon a trigger. This is described on page 16, line 23.

Claim 16 depends from claim 15 and recites that the trigger comprises instructions received together with the audio and/or video messages or from instructions imbedded in the broadcast content, or both. This is described on page 14, line 21 – page 15, line 2.

Claim 17 depends from claim 14 and recites that the transmitter includes an uplink facility for digitally encoding and multiplexing the audio and/or video messages into a packetized data stream, and for encoding and modulating the packet into a suitable frequency band for reception. This is described on page 7, lines 1-11. Claim 17 further recites a satellite 200 for receiving the data packet via an airlink from the uplink facility and for transmitting the data packet to the at least one communication apparatus. The satellite is illustrated as reference numeral 200 in Figures 1 and 2 and described on page 7, lines 12-21.

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Claim 18 depends from claim 14 and recites that the audio and/or video messages are advertisements or commercials provided by content providers and intended for targeted subscribers. This is described on page 13, lines 19-26.

Claim 19 depends from claim 18 and recites that the content providers are assured that an advertisement or commercial reaches the desired subscribers, as the content providers know the targeted subscriber, when the advertiser or commercial will be displayed on a device operatively connected to the subscriber's communication apparatus, and the amount or length of time that the advertisement or commercial is to be used by the subscriber. This is described on page 13, lines 19-26.

#### VI. Grounds of Rejection to be Reviewed on Appeal

The following issues are presented in this appeal:

Whether claims 1-19 are anticipated under 35 U.S.C. §102(b) over *Zigmond* (6,698,020).

#### VII. Argument

##### **The Rejection of Claims 1-19**

###### *Claim 1*

For anticipation to be present under 35 U.S.C. §102(b), there must be no difference between the claimed invention and the reference disclosure as viewed by one skilled in the field of the invention. *Scripps Clinic & Res. Found. V. Genentech, Inc.*, 18 USPQ.2d 1001 (Fed. Cir. 1991). All of the limitations of the claim must be inherent or expressly disclosed and must be arranged as in the claim. *Constant v. Advanced Micro-Devices, Inc.*, 7 USPQ.2d 1057 (Fed. Cir. 1988).

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Claim 1 recites "a sensor generating a using message indicative of a subscriber using the broadcast programming wherein said processor accesses said stored audio and/or video messages for display in the place of the broadcast program being currently used by the subscribers in response to the using message". Appellant respectfully submits that at least this element is not included in the *Zigmond* reference.

On page 2 of the Final Office Action, the Examiner points to column 7, lines 25-36 and column 8, lines 29-54 for the sensor. The columns that have been referenced do not appear to teach any specific reference to a sensor. This passage merely recites that targeted advertising is directed to a specific individual viewer, but not that the individual viewer is actually watching or using the video. The column 8 reference also describes a trigger based upon a specific time for inserting an advertising into the video stream. The triggering event is described in lines 38-41 as a designated signal encoded in video programming feed 52. Implied triggering is also set forth. Triggering has nothing to do with the present of a user.

The problem with the *Zigmond* reference as identified in the present application is that the television may be on but the user is not present. Thus, the targeted advertising will go unnoticed. The present invention solves this problem by providing the sensor that generates a "using message indicative of a subscriber using the broadcast programming". Therefore, Appellant respectfully submits that the sensor is not taught or suggested in the *Zigmond* reference. Consequently, claim 1 is believed to be allowable since each and every element is not contained in the *Zigmond* reference. Appellant, therefore, respectfully requests the Board to reverse the Examiner's position with respect to claim 1.

### ***Claims 2 and 3***

Claims 2 and 3 stand or fall together with claim 1.

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***Claim 4***

Claim 4 is a dependent claim and recites an uplink facility for digitally encoding and multiplexing said audio and/or video messages into a packetized data stream, and for encoding and modulating the data packet into a suitable frequency band for reception. Claim 2 also recites a satellite for receiving said data packet via an airlink from the uplink facility, and for transmitting the data packet to said at least one communication apparatus. The examiner points to column 17, line 50 through column 18, line 18. However, this passage does not refer to packetized signals. Therefore, the additional elements of claim 4 are also not taught in the *Zigmond* reference. Appellant, therefore, respectfully request the Board to reverse the Examiner's position with respect to claim 4.

***Claims 5-7***

Claims 5-7 stand or fall together with claim 1.

***Claim 8***

Claim 8 recites generating a viewing message indicative of a subscriber viewing the broadcast programming. This is similar to the sensor limitation of claim 1 and, therefore, claim 8 is also believed to be allowed for at least the same reasons set forth above with respect to claim 1. Appellant, therefore, respectfully requests the Board to reverse the Examiner's position with respect to claim 8.

***Claims 12-13***

Claims 12-13 stand or fall together with claim 8.

***Claim 14***

Claim 14 is an independent claim and also recites the same sensor set forth above with respect to claim 1. Appellant, therefore, respectfully requests the Board to reverse the Examiner's position with respect to claim 14.

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***Claims 15-16***

Claims 15-16 stand or fall together with claim 14.

***Claim 17***

Claim 17 is a dependent claim and recites an uplink facility for digitally encoding and multiplexing said audio and/or video messages into a packetized data stream, and for encoding and modulating the data packet into a suitable frequency band for reception. Claim 17 also recites a satellite for receiving said data packet via an airlink from the uplink facility, and for transmitting the data packet to said at least one communication apparatus. This claim is similar to claim 4 and is believed to be allowable for the same reasons. Appellant, therefore, respectfully requests the Board to reverse the Examiner's position with respect to claim 17.

***Claims 18-19***

Claims 18-19 stand or fall together with claim 14.

**VIII. Claims Appendix**

A copy of each of the claims involved in this appeal, namely claims 1-19.

**IX. Evidence Appendix**

None.

**X. Related Proceedings Appendix**

None.

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**Conclusion**

For the foregoing reasons, Appellant respectfully requests that the Board direct the Examiner in charge of this examination to withdraw the rejections.

Should any fees be associated with this submission, please charge Deposit Account 50-0383.

Respectfully submitted,

By:   
Georgann S. Grunebach, Reg. No. 33,179  
Attorney for Appellant

Dated: November 27, 2006

The DIRECTV Group, Inc.  
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Telephone: (310) 964-4615

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**VIII. Claims Appendix**

1. A communication system for delivering audio and/or video messages to a subscriber, comprising:

a transmitter for transmitting broadcast programming and audio and/or video messages to a subscriber as separate data streams; and

at least one communication apparatus having receiver circuitry for receiving said audio and/or video messages data stream separate from receiving the data stream containing said broadcast programming, each subscriber having at least one communication apparatus, said at least one communication apparatus further including:

a processor operatively connected to a mass storage device for processing and storing said received audio and/or video messages,

a sensor generating a using message indicative of a subscriber using the broadcast programming wherein

said processor accesses said stored audio and/or video messages for display in place of the broadcast programming being currently used by the subscribers in response to the using message.

2. The communication system of claim 1, wherein said processor displays said stored audio and/or video messages based upon detecting a trigger.

3. The communication system of claim 2, wherein said trigger comprises instructions received together with the audio and/or video messages or from instructions embedded in the broadcast content or both.

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4. The communication system of claim 1, wherein said transmitter further includes:

an uplink facility for digitally encoding and multiplexing said audio and/or video messages into a packetized data stream, and for encoding and modulating said data packet into a suitable frequency band for reception; and

a satellite for receiving said data packet via an airlink from the uplink facility, and for transmitting the data packet to said at least one communication apparatus.

5. The communication system of claim 1, wherein said audio and/or video messages are advertisements or commercials provided by content providers and intended for targeted subscribers.

6. The communication system of claim 5, wherein content providers are assured that an advertisement or commercial reaches the desired subscribers as the content provider knows the targeted subscriber, when the advertisement or commercial will be provided on a device operatively connected to the subscriber's communication apparatus, and the amount or length of time the advertisement or commercial is to be provided to the subscriber.

7. The communication system of claim 1, wherein the communication apparatus is a receiver or a set top box.

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8. A method for providing audio and/or video messages to subscribers in a communication system, comprising:

transmitting broadcast programming and audio and/or video messages to the subscribers as separate data streams from one location; and

generating a viewing message indicative of a subscriber viewing the broadcast programming,

receiving said audio and/or video messages data stream separate from receiving the data stream containing said broadcast programming at the subscribers location, said received audio and/or video messages further subject to processing for display in place of the broadcast programming being currently used by the subscribers in response to a viewing message.

9. The method of claim 8, wherein said audio and/or video messages are displayed based upon detecting a trigger.

10. The method of claim 9, wherein said trigger comprises instructions received together with the audio and/or video messages or from instructions embedded in the broadcast content or both.

11. The method of claim 8, wherein said step of transmitting further includes digitally encoding and multiplexing said audio and/or video messages into a packetized data stream;

encoding and modulating said digitally encoded data packet into a suitable frequency band for reception; and

transmitting the data packet to said subscribers.

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12. The method of claim 8, wherein said audio and/or video messages are advertisements or commercials provided by content providers and intended for targeted subscribers.

13. The method of claim 12, wherein content providers are assured that an advertisement or commercial reaches the targeted subscribers, as the content provider knows the targeted subscriber, when the advertisement or commercial will be provided to the targeted subscriber, and the amount or length of time the advertisement or commercial is to be provided to the targeted subscriber.

14. A communication apparatus for processing audio and/or video messages received from a communication system for viewing by a subscriber, comprising:

receiver circuitry for receiving a audio and/or video message data stream that is transmitted separately from a data stream containing broadcast programming that is received,

a processor operatively connected to a mass storage device for processing and storing said received audio and/or video messages,

a sensor generating a using message indicative of a subscriber using the broadcast programming wherein

a processor operatively connected to said receiver circuitry, the sensor and a mass storage device for processing and storing said received audio and/or video messages, wherein said processor accesses said stored audio and/or video messages for display in place of broadcast programming that is being currently used by the subscriber in response to the using message.

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15. The communication apparatus of claim 14, wherein said processor displays said stored audio and/or video messages based upon detecting a trigger.

16. The communication apparatus of claim 15, wherein said trigger comprises instructions received together with the audio and/or video messages or from instructions embedded in the broadcast content or both.

17. The communication apparatus of claim 14, wherein said transmitter further includes:

an uplink facility for digitally encoding and multiplexing said audio and/or video messages into a packetized data stream, and for encoding and modulating said data packet into a suitable frequency band for reception; and

a satellite for receiving said data packet via an airlink from the uplink facility, and for transmitting the data packet to said at least one communication apparatus.

18. The communication apparatus of claim 14, wherein said audio and/or video messages are advertisements or commercials provided by content providers and intended for targeted subscribers.

19. The communication apparatus of claim 18, wherein content providers are assured that an advertisement or commercial reaches the desired subscribers as the content provider knows the targeted subscriber, when the advertisement or commercial will be displayed on a display device operatively connected to the subscriber's communication apparatus, and the amount or length of time the advertisement or commercial is to be used by the subscriber.

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**IX. Evidence Appendix**

None.

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X. Related Proceedings Appendix

None.